

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Ajeet Singh v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1004/1996
under Article 226 of the
Constitution of India.

Date of Order : 27th July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.Mridul, Sr.Advocate assisted by Shri Ashok Kumar
Choudhary, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner, a constable in Rajasthan Police was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958").

By memorandum referred above dated 20.7.1993 12 allegations of misconduct were levelled against the petitioner. In fact all the 12 allegations constitute one misconduct i.e. wilful unauthorised absence from duties. The wilful absence shown under various charges is of 79 days. The petitioner denied the charges, therefore, an inquiry officer was appointed to inquire

into the allegations levelled against the petitioner. The inquiry officer completed the inquiry and submitted its report to the disciplinary authority on 25.3.1994. The inquiry officer held the petitioner guilty for allegations No.4, 5, 6, 7, 10, 11 and 12 and the allegations No.1, 2, 3, 8 and 9 were not found proved. In view of the findings given by inquiry officer the total absence of 45 days was established whereas absence of 34 days under the allegations No.1, 2, 3, 8 and 9 was not proved.

The disciplinary authority by an order dated 1.12.1994 imposed a punishment of dismissal from services upon the petitioner. Being aggrieved by the same the petitioner preferred an appeal before the appellate authority i.e. Director General of Police, Bikaner Range, Bikaner and the same also came to be rejected vide the order dated 30.8.1994.

By this petition for writ a challenge is given by the petitioner to the order dated 30.8.1994 passed by the appellate authority and also to the order dated 1.12.1994 passed by the disciplinary authority i.e. Superintendent of Police, Bikaner.

The contention of the petitioner is that the order passed by the appellate authority deserves to be quashed and set aside being in violation of Rule 30 of the Rules of 1958 and also being an order lacking

reasons. The validity of the order dated 1.12.1994 passed by the disciplinary authority is challenged being the same an order passed without application of mind. It is contended by the counsel for the petitioner that the inquiry authority found the petitioner guilty for remaining absent from duties for a period of 45 days. The disciplinary authority while in agreement with the findings given by the inquiry officer held the petitioner guilty for absence of all 79 days as alleged in the charge sheet. Counsel for the petitioner has also urged that the order passed by the disciplinary authority is an order bad in eye of law as the finding given by the disciplinary authority is not at all supported by reasons and also being failed to point out any good and sufficient reason to impose the severest punishment i.e. of dismissal from service. It is also contended by the counsel for the petitioner that the punishment imposed is shockingly disproportionate to the delinquency alleged.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the orders passed by the appellate authority as well as the disciplinary authority possess reasons as required under the law. It is further contended that the punishment imposed upon the petitioner is proportionate to his delinquency as the petitioner was a member of police force wherein absence without authority is quite a serious misconduct.

I have heard counsel for the parties and also perused the documents annexed with the writ petition.

The first contention of the counsel for the petitioner is that the order passed by the appellate authority is in flagrant violation of Rule 30 of the Rules of 1958 which prescribes procedure for considering an appeal preferred by a delinquent employee giving challenge to an order imposing punishment under Rule 14 of the Rules of 1958.

Relevant portion of Rule 30 i.e. sub-rule (2) of Rule 30 of the Rules of 1958 reads as under:

“(2) In the case of an appeal against an order imposing any of the penalties specified in rule 14, the appellate authority shall consider-

(a) whether the procedure prescribed in these rules has been complied with and if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice.

(b) whether the facts on which the order was passed have been established;

(c) whether the facts established afford sufficient justification for making an order; and

(d) whether the penalty imposed is excessive, adequate or inadequate; [and after giving a personal hearing to the Government Servant to explain his case, if he desires so] and after consultation with the Commission if such consultation is necessary in the case, pass orders

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.”

According to Rule 30 the appellate authority is required to satisfy himself while considering an appeal with regard to adhering of the procedure prescribed under the Rules of 1958 or holding inquiry for imposing a major punishment. It further prescribes that the appellate authority is required to satisfy itself as to whether the facts established afford sufficient justification for making an order and whether the penalty imposed is excessive adequate or inadequate.

I have perused the order passed by the appellate authority. The appellate authority at inception reproduced the charges leveled against the petitioner and then reproduced the appeal submitted by the petitioner and thereafter in most casual manner just reproduced the provisions of Rule 30 of the Rules of 1958. The appellate authority has not at all considered the appeal in accordance with Rule 30 of the Rules of 1958.

The next contention of the counsel for the petitioner is that the order passed by the

disciplinary authority is in violation of provisions of sub-rule(9) of Rule 16 of the Rules of 1958 which prescribes that the disciplinary authority should record finding against the charge. According to the counsel for the petitioner no specific finding against any of the charges levelled against the petitioner is given by the disciplinary authority.

I have scanned the order passed by the disciplinary authority. The disciplinary authority in the order impugned after reproducing the charges levelled against the petitioner has given reference of reply submitted by the petitioner to the charge sheet, the order whereby inquiry officer was appointed and the order whereby the petitioner was allowed to have assistance of defence counsel. The disciplinary authority thereafter mentioned about the finding of the inquiry officer and then by accepting the findings given by the inquiry officer ordered for imposing punishment of dismissal from service. The total finding and reasons for reaching such finding as given by the disciplinary authority in the order dated 1.12.1994 reads as under:-

" दोषी कर्मचारी गैर हाजिर रहने का है बार बार गैर हाजिर रहने तथा आरोप सं. 4, 8, 6, 7, 10, 11, 12 पूर्णतया: प्रमाणित जांच अधिकारी माने है । मय जांच अधिकारी के निर्णय से सहमत हूं पत्रावली गहन अध्ययन के पश्चात् मैं इस नतीजे पर पहुंचा हूं कि ऐसे पुलिस कर्मचारी को राज्य में बनाये

रखने का कोई औचित्य नहीं है । लिहाजा श्री अजीत सिंह कानि. 467 हाल कानि. 1463 जिला श्री गंगानगर को तुरन्त प्रभाव से राज्य सेवा से पृथक करने का निर्णय लेता हूँ ।"

From reading of the findings given by the disciplinary authority it is apparent that the same is not at all supported by any reason. By force of sub-rule(9) of Rule 16 of the Rules of 1958 the disciplinary authority is under obligation to record reasons while giving findings against the charges levelled upon a government servant. The non compliance of the statutory requirement as prescribed under sub-rule(9) of Rule 16 of the Rules of 1958 is fatal and the same makes the order of disciplinary authority bad in eye of law.

The disciplinary authority also failed to record any good and sufficient reason to impose the punishment of dismissal upon the petitioner. Under Rule 14 of the Rules of 1958 number of major punishments are prescribed which could have been imposed upon the petitioner but the disciplinary authority chose to impose the severest punishment upon the respondents. In view of Rule 14 of the Rules of 1958 the disciplinary authority is required to give good and sufficient reasons to elect the punishment imposed vis-a-vis the other punishments prescribed under the Rules. The disciplinary authority is required to consider all the punishments provided

under the Rules and then to reach at a conclusion for imposing the most appropriate punishment proportionate to delinquency.

The punishment of dismissal should be imposed with all caution and in rarest of rare cases normally where the act of delinquent employee is extremely grievous and no chance there appears for any improvement in the conduct of the employee or where the disciplinary authority reaches at the conclusion that the employee himself is not at all interested in services and virtually abandoned the employment. Hon'ble Supreme Court in the case of Shri Bhagwanlal Arya v. Commissioner of Police, Delhi and others, reported in (2004)4 SCC 560, held that punishment of dismissal/removal from service can be imposed only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for service. Merely one incident of absence is not a ground or reason justified for awarding such a severe punishment. The absence of 45 days that too in short parts is not such a gross delinquency which may warrant the imposition of penalty of dismissal.

In view of whatever discussed above this petition for writ deserves acceptance. The same, therefore, is allowed. The orders passed by the appellate authority dated 30.8.1994 and the

disciplinary authority dated 1.12.1994 are hereby quashed. The respondents are directed to reinstate the petitioner in service. However, it is open for the disciplinary authority to pass an order afresh by considering the inquiry report submitted by the inquiry officer in accordance with the Rules of 1958. In event the disciplinary authority reaches at the conclusion that the petitioner deserves punishment then it is open for him to impose any major punishment as provided under Rule 14 of the Rules of 1958 except the punishment of removal or dismissal from service.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.